881.

SUPREME COURT OF THE UNITED STATES.

No. 89.

ANDREW DUNCAN, PL'FF. IN ERROR,

VS.

ISAAC DARST, HENRY DARST & JACOB DARST.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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S. D. Langtree, Print.

UNITED STATES, *sct.*

The President of the United States, to the Judges of the
[L. S.] Circuit Court of the United States, holden in and for the Eastern District of Pennsylvania, in the third circuit, greeting:

Because that in the record and process, and also in the rendering of judgment in the suit before you, or some of you, between Isaac Darst, Henry Darst and Jacob Darst, citizens of the State of Ohio, to the use of Isaac Darst, a citizen of the State of Ohio, plaintiffs, and Andrew Duncan, a citizen of the State of Pennsylvania, defendant, in a plea of debt, a manifest error has intervened to the great damage of the said defendant, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded, that if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon, what of right ought to be done.

Witness the Honourable Roger B. Taney, chief Justice of the Supreme Court of the United States at Washington,
[L. S.] this thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-one, and of the Independence of the United States, the sixty-sixth.

FRA. HOPKINSON, *Cl'k Circ't C'rt.*

Allowed by JOS. HOPKINSON, *D. J.*

UNITED STATES, *Eastern District of Pennsylvania, sct.*

To Isaac Darst, Henry Darst and Jacob Darst, citizens of the State of Ohio, to the use of Isaac Darst, a citizen of the State of Ohio.

Whereas, by a writ of error issuing out of the Supreme Court of the United States, to the Judges of the Circuit Court of the United States, holden in and for the eastern district of Pennsylvania, in the third circuit directed, wherein Andrew Duncan, a citizen of the State of Pennsylvania is the complainant, the said Judges are directed to send the record and process of a certain suit, with all

things concerning them, so that the same may be had before the chief justice and the associate justices of the Supreme Court of the U. States, on the second Monday in January next, at the city of Washington, being the seat of National Government; in which suit the said Isaac Darst, Henry Darst and Jacob Darst, to the use of Isaac Darst, were original plaintiffs, and the said Andrew Duncan was original defendant. That the record and process aforesaid, being inspected, they, the said Supreme Court, may cause to be done thereupon, what of right ought to be done. And the said Andrew Duncan having made an assignment of errors, and given good and sufficient security to prosecute his said writ of error to effect, and answer all damages and costs, if he fail to make good his plea; you are hereby commanded to appear (if you see cause,) at the said Supreme Court, at the time and place aforesaid, to answer to the said writ of error, and the errors assigned by the said Andrew Duncan.

Given under my hand and seal, this thirty-first day of December, A. D., 1841, and in the sixty-sixth year of the Independence of the said United States.

JOS. HOPKINSON, [L. S.]

I acknowledge service of the within and foregoing citation and notice of the writ of errors therein mentioned, which writ is returnable to the next term of the Supreme Court of the United States.

CHARLES WHEELER,
Att'y for Isaac Darst.

31st December, 1841.

Pleas before the Honorable the Judges of the Circuit Court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, of October Sess. 1833.—No. 8.

It is thus contained:

Andrew Duncan, a citizen of Pennsylvania, yeoman, was summoned to answer Isaac Darst, Henry Darst and Jacob Darst, citizens of the State of Ohio, to the use of the said Isaac, in a plea that he render unto them the sum of five thousand four hundred and sixty-five dollars and forty-four cents, which he owes to them, and unjustly detains from them.

For that whereas, the said plaintiffs heretofore, viz: in the October sessions, in the year one thousand eight hundred and twenty-four, of this honorable court, by the consideration and judgment of the same court, recovered against Jacob Roth, a certain sum of five thousand four hundred and sixty-five dollars and forty-four cents which in and by the said court, was adjudged to the plaintiffs, and with their assent, for their damages which they had sustained on account of his not performing a certain covenant, whereof the said Jacob

Roth was convicted, as by the record and proceedings thereof will more fully appear.

And the said plaintiffs further say, that for having execution of the said judgment, viz: on the twenty-seventh day of November, one thousand eight hundred and thirty-two, they sued out of the said court, a certain writ called a Capias ad Satisfaciendum upon the said judgment against the said Jacob Roth, directed to the marshal of the eastern district of Pennsylvania, by which writ the said marshal was commanded, *the* he should take the said Jacob Roth, if he should be found in his district, and him safely keep, so that he might have his body before the Judges of the said court, at a session of the same court, to be holden at Philadelphia, on the eleventh day of April next ensuing, to satisfy the said plaintiffs, the said sum recovered for their damages aforesaid, and that the said marshal should have there that writ; which said writ afterwards, and before the delivery thereof to the said marshal to be executed, was duly endorsed with a direction to the said Marshal, requiring him to levy five thousand four hundred and sixty-five dollars and forty-four cents.

And which said writ so endorsed as aforesaid, afterwards and before the said return thereof, viz: on the said twenty-seventh day of November aforesaid, was delivered to Benjamin S. Bonsall, who then, and from thenceforth, until and after the return thereof, was marshal as aforesaid, to be executed in due form of law; by virtue of which said writ, and of the endorsement so made thereon as aforesaid, the said Benjamin so being marshal as aforesaid, afterwards, and before the return of the said writ, to wit: on the sixth day of December, in the year last aforesaid, and within the district of the said marshal, took and arrested the said Jacob Roth by his body, and then and there by virtue of said writ, and of the said endorsement so made thereon as aforesaid, had and detained him in his custody, in execution for the sum of five thousand four hundred sixty-five dollars forty-four cents, as endorsed on said writ aforesaid, and then and there, as by law he might, delivered him to the defendant; he, the defendant, then and there being the sheriff of the county of York, in the State of Pennsylvania, viz: in the district aforesaid, and then and there enjoined and required the said defendant to receive the said Jacob Roth into his custody, and to keep him safely until he should be discharged by due course of law.

And the said defendant, so receiving and so having according to law the said Jacob Roth in his custody, to be kept until discharged by due course of law, kept and detained him in his custody from thence, until he, the said defendant, so being sheriff of York as aforesaid, afterwards, to wit: on the seventh day of December last aforesaid, without the leave or license, and against the will of the said plaintiffs, and contrary to the statute in such case made and provided, suffered and permitted the said Jacob Roth to escape and go at

large; and the said Jacob Roth did then and there escape and go at large, wheresoever he would, out of the custody of him, the said defendant, he, the said defendant, so then being sheriff of York as aforesaid, and the said sum of five thousand four hundred and sixty-five dollars and forty-four cents, so endorsed in the said writ, being then and still wholly unpaid and unsatisfied to the said plaintiff, whereby an action hath accrued to the said plaintiffs to demand, and have of and from the said defendant, the said sum of five thousand four hundred and sixty-five dollars and forty-four cents above demanded.

Yet the said defendant, although often requested so to do, hath not, as yet, paid the said sum of five thousand four hundred and sixty-five dollars and forty-four cents, above demanded, or any part thereof, to the said plaintiffs; but they to do this have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs, five thousand four hundred and sixty-five dollars and forty-four cents; and thereupon they bring suit, &c.

And thereupon, the said Andrew Duncan, by John M. Read, Esquire, his attorney, comes and defends the force and injury, when &c., and by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says: that the aforesaid plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says: that by an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "a supplement to the act entitled 'a supplement to the act entitled an act for the relief of insolvent debtors, passed the twenty-ninth January, one thousand eight hundred and twenty,'" which was approved on the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and twenty—which said act was, and continued in full force and effect long after the commencement of this suit—it is provided: that if any debtor shall thereafter be arrested or held in execution, on a bail piece in a civil suit, and who shall have resided six months in this commonwealth, previously thereto, he may apply when arrested on execution, to the president or any associate judge of the Court of Common Pleas, of the county in which he is so arrested, or when held on a bail piece, may apply to the president or associate judge of the said court, in the county in which the suit was instituted, and give bond to the plaintiff or plaintiffs, at whose suit he is so arrested or held, with such security as shall be required and approved of by the said judge; the condition of which bond shall be, that the said debtor shall be and appear at the next Court of Common Pleas for said county, and there take the benefit of the insolvent laws of this Commonwealth, and to surrender himself to the gaol of the said county, if he fail to comply with all things required by law, to entitle him to be discharged, and generally to abide all orders of the said court: whereupon, the said judge shall give an order to the sheriff, constable,

or other person having such debtor in custody, to forthwith discharge him upon his paying the gaol fees, if any be due.

And this defendant further says, that by the third section of the Act of Congress of the United States, entitled "an act to regulate processes in the courts of the United States," approved the nineteenth day of May, one thousand eight hundred and twenty-eight, the said above recited act of the General Assembly of the Commonwealth of Pennsylvania, and the provisions aforesaid, became the law of the land, so far as regarded the several courts of the United States, in the State of Pennsylvania, and so continued for a long period after the commencement of this suit.

And the said defendant further says, that after the delivery and commitment of the said Jacob Roth, in the said declaration of the said plaintiffs mentioned, and before the said Jacob Roth was, by the said defendant permitted, and suffered to go out of his custody at large, as in the said declaration is alleged, to wit: on the seventh day of December, one thousand eight hundred and thirty-two, at the County of York, in the eastern district of Pennsylvania, the said Jacob Roth thus arrested on execution, and having resided in the Commonwealth of Pennsylvania six months previously thereto, applied to George Bainitz, an associate judge of the Court of Common Pleas of the County of York, in which said county he was so arrested in execution, and did then and there give bond with John Roth and John West, as sureties in the sum of five thousand and eighty-two dollars, to the said plaintiffs, being the security required and approved of by the said judge; the condition of which said bond was, that he, the said Jacob Roth, should be and appear at the next Court of Common Pleas, to be held at York, in and for the said County of York, on the first Monday of January next, then and there to take the benefit of the insolvent laws of the Commonwealth, and to surrender himself to the gaol of the said county, if he fail to comply with all things required by law, to entitle him to be discharged, and generally to abide all orders of said court: whereupon, the said judge of the said County of York, did then and there give an order to the said defendant to discharge the said Jacob Roth, upon his paying the gaol fees, if any were sued; and the reuponthe said defendant did then and there discharge the said Jacob Roth accordingly, out of his custody, as to the suit and execution aforesaid, and permit and suffer him to go out of the custody of the said defendant, at large and abroad, wheresoever he would and pleased, and without restraint; without *that* this, that the said defendant did voluntarily, freely, and wrongfully and without authority of law, permit or suffer the said Jacob Roth, to go and escape out of the said custody of the said defendant, sheriff as aforsaid, in manner and form as the said plaintiffs have complained of against him; and this he, the said defendant, is ready to verify, whereof he prays judgment, if the said plaintiffs ought to have or maintain the aforesaid action thereof against him, &c.

And the said plaintiffs, as to the said plea of the said defendant by him above pleaded, say: that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against him, the said defendant, and that they the said plaintiffs, are not bound by law to answer the same, and this they the said plaintiffs are ready to verify; wherefore for want of sufficient plea in this behalf, they, the said plaintiffs, pray judgment, and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, &c.

And the said defendant saith, that his said plea by him above pleaded, and the matters therein contained, in manner and form as the same are above pleaded, and set forth, are sufficient in law to bar and preclude the said plaintiffs from having or maintaining their aforesaid action thereof, against him the said defendant; and he the said defendant is ready to verify and prove the same, when, where, and in such manner as the said court here shall direct and award; wherefore, inasmuch as the said plaintiffs have not answered the said plea, nor hitherto in any manner denied the same, the said defendant prays judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof, against him the said defendant, &c.

Which said demurrer and joinder in demurrer, to the above plea of the said defendant, are, in pursuance of the following agreement, filed by the said parties in the words and figures following, to wit:

DARST, et al., *vs.* DUNCAN. } No. 8.

In the Circuit Court, U. S., Eastern District of Pennsylvania, October Sess., 1833.

In this case, the pleas of nil debet and assignment to John L. Fuller are withdrawn, and also the pleas of accord and satisfaction (filed Oct. 9, 1839,) and the plea of release filed same date, of which oyer was prayed and granted, are herewith withdrawn, and a demurrer and joinder in demurrer, and issue to the special plea, filed on said 9th of Oct., to wit: the plea which sets out the discharge under the insolvent laws of Pennsylvania.

The amount actually claimed, is two thousand dollars and forty-three cents, with interest from 24 Nov., 1832.

THO'S C. HAMBLY, *Att'y for Plff.*
CHARLES WHEELER, *for Plff.*
A. C. RAMSEY, *Att'y for Deft.*
JOHN M. READ, *Att'y for Deft.*

Oct. 16, 1839.

And because the court are not now here advised, to give their judgment of and concerning the premises, a day is therefore given to the said parties, to be before the said court till the fifteenth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, to hear their judgment thereon, for that the court are not yet advised, &c.

On which said day, before the said court, come the parties aforesaid, by their attornies aforesaid.

Whereupon, all and singular the premises being seen and by the court now here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said plea in manner and form aforesaid by the said defendant above pleaded, and the matters therein contained, are not sufficient in law to bar or preclude the said plaintiffs from having or maintaining their aforesaid action thereof, against him, the said defendant.

Therefore, it is considered by the court here, that the said Isaac Darst, Henry Darst and Jacob Darst, to the use of Isaac Darst, citizens of the State of Ohio, do recover against the said Andrew Duncan, a citizen of the State of Pennsylvania, as well the sum of two thousand dollars, and forty-three cents, their debt aforesaid, and also one hundred and seventy-five dollars and ninety-four cents, for their costs and charges, by them about their suit in that behalf expended, to the said Isaac Darst, Henry Darst and Jacob Darst, to the use of Isaac Darst, by the court here with their assent adjudged.

UNITED STATES, *Eastern District of Pennsylvania, sct:*

I certify the foregoing to be a true and faithful copy of the record and proceedings of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the third circuit, in a certain action of debt therein lately depending between Isaac Darst, Henry Darst and Jacob Darst, citizens of the State of Ohio, to the use of Isaac Darst, a citizen of the State of Ohio, plaintiffs, and Andrew Duncan, a citizen of the State of Pennsylvania, defendant.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Circuit Court, at Philadelphia, [L. S.] this thirteenth day of January, A. D., 1842, and in the sixty-sixth year of the independence of the said United States.

FRA. HOPKINSON,
Cl'k Circuit Court.